

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-46907
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: June 25, 2012
County: Wayne (82-15)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, MCL 400.37 and Claimant's request for a hearing. After due notice, a telephone hearing was held on June 25, 2012, at Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

ISSUE

Did the Department correctly determine that Claimant is not disabled for purposes of the Medical Assistance (MA or Medicaid) and State Disability Assistance (SDA) programs?

FINDINGS OF FACT

The Administrative Law Judge, based on competent, material and substantial evidence in the record and on the entire record as a whole, finds as material fact:

1. On July 29, 2011, Claimant filed an application for MA and SDA benefits. The application also requested MA retroactive to April 1, 2011.
2. On April 10, 2012, the Department sent a Notice of Case Action to Claimant, denying the application.
3. On April 16, 2012, Claimant filed a request for an Administrative Hearing.
4. Claimant, age forty-nine [REDACTED] has a high-school diploma.

5. Claimant last worked in 2007 as a hi-lo driver. Claimant has no other relevant work experience. Claimant's relevant work history consists exclusively of semi-skilled medium-exertional work activities.
6. Claimant has a history of bipolar disorder (onset date [REDACTED]), right elbow injury and surgery (onset date [REDACTED] and low back and shoulder pain (onset date [REDACTED])).
7. Claimant was hospitalized in [REDACTED] as a result of severed nerves in his right arm, necessitating surgery. He was hospitalized for one night. He was also hospitalized in [REDACTED] when he was stabbed several times.
8. Claimant currently suffers from bipolar disorder, right arm injury and shoulder and low back pain.
9. Claimant has severe limitations of his ability to use his right arm and hand, and with concentration, persistence and pace. Claimant's limitations have lasted or are expected to last twelve months or more.
10. Claimant's complaints and allegations concerning his impairments and limitations, when considered in light of all objective medical evidence, as well as the whole record, reflect an individual who is so impaired as to be incapable of engaging in any substantial gainful activity on a regular and continuing basis.

CONCLUSIONS OF LAW

MA was established by Title XIX of the U.S. Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department administers MA pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM) and Reference Tables (RFT).

SDA provides financial assistance for disabled persons and was established by 2004 PA 344. The Department administers SDA pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in BAM, BEM and RFT.

The Administrative Law Judge concludes and determines that Claimant **IS NOT DISABLED** for the following reason (select ONE):

1. Claimant is engaged in substantial gainful activity.

OR

2. Claimant's impairment(s) do not meet the severity and one-year duration requirements.

OR

3. Claimant is capable of performing previous relevant work.

OR

4. Claimant is capable of performing other work.

The Administrative Law Judge concludes that Claimant **IS DISABLED** for purposes of the MA program, for the following reason (select ONE):

1. Claimant's physical and/or mental impairment(s) meet a Federal SSI Listing of Impairment(s) or its equivalent.

State the Listing of Impairment(s): _____.

OR

2. Claimant is not capable of performing other work.

The following is an examination of Claimant's eligibility required by the Code of Federal Regulations (CFR). 20 CFR Ch. III, Secs. 416.905, 416.920. The State of Michigan is required to use the five-step Medicare eligibility test in evaluating applicants for the State's Medicaid disability program.

First, the Claimant must not be engaged in substantial gainful activity. In this case, Claimant has not worked since 2007, when he was employed as a hi-lo driver. Accordingly, it is found and determined that the first requirement of eligibility is fulfilled, and Claimant is not engaged in substantial gainful activity. Department Exhibit 1, p. 13.

Second, in order to be eligible for MA, a claimant's impairment must be sufficiently severe and be at least one year in duration. In this case, Claimant's onset date is [REDACTED]. In [REDACTED] Claimant was pushed against a glass window, causing cuts and nerve damage to his right arm. The injury required neurosurgery and resulted in the loss of use of his right arm.

Claimant testified he is treating at [REDACTED] for his physical and mental ailments. He stated that, in [REDACTED], he slipped and fell on the ice and has had back and shoulder problems since then. Also, he was diagnosed with bipolar disorder by [REDACTED], and has been treating with her for five months. Claimant states he gets upset often and has no patience.

Based on this information of record, it is found and determined that Claimant's impairments are of sufficient severity and duration to fulfill the second eligibility requirement.

Turning now to the third requirement for MA eligibility approval, the factfinder must determine if Claimant's impairments are listed in the federal Listing of Impairments, found at 20 CFR Chap. III, Appendix 1 to Subpart P of Part 404-Listing of Impairments. In this case, it is found and determined that Claimant's impairments do not meet the definitions in Listing 1.04, Disorders of the Spine, Listing 1.02, Major dysfunction of a joint, or Listing 12.04, Affective disorders, as there are no medical records presented to establish these impairments. Claimant failed to present medical records to substantiate his diagnoses and treatment for any of these impairments, and it is, therefore, not possible to determine if Claimant's impairments are of appropriate severity as defined in the Listing of Impairments.

Claimant, therefore, has not established eligibility for Medicaid based on his physical and mental impairments. As Claimant is not found to be eligible for MA based solely on a physical or mental impairment, it is necessary to proceed further to the last two eligibility requirements of the five-step Medicaid eligibility sequence.

The last two eligibility requirements of the five-step Medicaid eligibility sequence look at whether Claimant is capable of performing prior relevant work (Step 4) and, if not, whether he is capable of performing other work that is available in significant numbers in the national economy (Step 5). In this case, Claimant's prior relevant work consists of driving a hi-lo at a temporary agency. Claimant gave credible and un rebutted testimony that he cannot drive a hi-lo vehicle now because he needs both arms to drive it. He needs one arm to steer, and he needs to lift and carry objects on the hi-lo with the other arm. He also needs to be able to pull the gear shift while steering, and he cannot do this. Last, he stated that he would not be able to climb up and down from the hi-lo seat with only one arm.

Based on Claimant's testimony and all of the evidence in the record taken as a whole, it is found and determined that Claimant cannot perform prior relevant work in this case. Next, Claimant's ability to perform other work (Step 5) shall be considered.

If now, at the fifth step, Claimant is found capable of performing other work that is available in significant numbers in the national economy, MA must be denied. The Department presented no evidence to substantiate its assertion that Claimant is capable of performing other work and also did not present evidence to show that any such work is readily available. As the Department has the responsibility, or burden of proof, to establish that other work exists and the Department failed to do so, the Claimant has no duty to produce evidence to disprove the point. Therefore, it is found and determined that there is no other work that is available in significant numbers in the national economy and which Claimant can perform.

In conclusion, it is found and determined that Claimant meets the eligibility requirements of the Medical Assistance (MA or Medicaid) program, by virtue of being disabled from prior relevant work and from other work that is available in significant numbers in the national economy.

In conclusion, based on the Findings of Fact and Conclusions of Law above, the Claimant is found to be

NOT DISABLED DISABLED

for purposes of the MA program. The Department's denial of MA benefits to Claimant is

AFFIRMED REVERSED

Considering next whether Claimant is disabled for purposes of SDA, the individual must have a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of MA benefits based upon disability or blindness (or receipt of SSI or RSDI benefits based upon disability or blindness) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in BEM Item 261. Inasmuch as Claimant has been found disabled for purposes of MA, Claimant must also be found disabled for purposes of SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, and for the reasons stated on the record finds that Claimant

DOES NOT MEET MEETS

the definition of medically disabled under the Medical Assistance and SDA programs as of the onset date of 2008.

The Department's decision is

AFFIRMED REVERSED

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Initiate processing of Claimant's July 29, 2011, application, to determine if all nonmedical eligibility criteria for MA, retroactive MA and SDA benefits have been met.
2. If all nonmedical eligibility criteria for benefits have been met and Claimant is otherwise eligible for benefits, initiate processing of MA, retroactive MA and SDA benefits to Claimant, including any supplements for lost benefits to which Claimant is entitled in accordance with policy.

3. If all nonmedical eligibility criteria for benefits have been met and Claimant is otherwise eligible for benefits, initiate procedures to schedule a redetermination date for review of Claimant's continued eligibility for program benefits in July 2013.
4. All steps shall be taken in accordance with Department policy and procedure.



Jan Leventer
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: June 26, 2012

Date Mailed: June 26, 2012

NOTICE: Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request. (60 days for FAP cases)

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

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Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

JL/pf

cc:

